

Independent Assessment Process Oversight Committee

Meeting of June 10, 2014

Vancouver, BC

Minutes

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative
Mitch Holash	Church representative <i>absent for item 1</i>
David Iverson	Church representative
Line Paré	Government of Canada representative
David Paterson	Claimant counsel representative
Diane Soroka	Claimant counsel representative

Also present

Kaye Dunlop	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for item 1 only</i>
Michael Mooney	Court Monitor, Crawford Class Action Services
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS (recorder)

Absent with regrets

Paul Favel	Assembly of First Nations representative
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1. Report of the Technical Subcommittee

Kaye Dunlop reported on a meeting of the Technical Subcommittee held June 9, 2014.

At the subcommittee's invitation, Canada's Manager of National Research and Analysis West, Paula Caird, joined the subcommittee for its meeting. Ms. Caird described how the school histories are produced, including their history in previous litigation and ADR processes.

Ms. Caird was asked about the addition and removal of documents, and Kaye Dunlop reported her reply that Canada only removes documents if they locate a better copy of the same document; it is not their practice to remove documents entirely. David Paterson provided specific examples where documents were

removed from the St. Michael's IRS narrative, and Canada has undertaken to look into this.

Kaye Dunlop had raised the issue of the Jack River Annex, where about 800-1000 documents had been added by Canada to address jurisdictional questions. Kaye Dunlop asked Canada's representatives to look at a better way of informing parties about what has been added.

A related area was staff lists, which are important in student-on-student cases where there are questions of corporate knowledge of student-on-student abuse and staff lists help establish how long someone was at a school. Canada had previously committed that it would provide these but apparently determined later that it could not.

Canada has committed, however, to provide staff listings on individual cases where there is a relevant issue that relates to corporate knowledge. A communication to counsel will be required to inform claimants' counsel that they can request this information.

David Paterson asked if staff lists could be automatically provided in the same manner as Canada's admissions of staff knowledge. Karen Cuddy said that this was her understanding, and that she would consult with staff to make this happen.

Kaye Dunlop reported on the Secretariat's work to expand the electronic document interchange (EDI) system to enable claimants' counsel and Canada to send, as well as receive, documents electronically. The Secretariat will undertake a pilot project over the summer with three law firms, as well as Canada, and report back in September.

Mitch Holash joined the meeting.

2. Approval of minutes

The committee approved the minutes of the May 6, 2014 meeting as presented.

3. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- About 33,200 applications have now been admitted, and 3,623 not admitted, representing 9.6% of applications received. About 1,000 claims remain in the admissions process, of which almost 200 are from deceased claimants.

- About 4,800 cases remain in case management, of which 4,246 are waiting for mandatory documents prior to the scheduling of a hearing. 546 cases are awaiting mandatory documents post-hearing.
- 21,356 hearings have been held to date.
- During the 2013-14 fiscal year ended March 31, 4,164 hearings were held and 770 negotiated settlements completed.
- There are 298 cases available for scheduling, which is low. In the April-June quarter, 1,172 hearings have been scheduled or held, which is above the target of 1,125. However, it appears that hearings for August 2014 will not meet target due to the low number of hearing-ready files or the unavailability of claimant counsel.
- 27,510 claims have been resolved, which is 73% of all claims received. 10,356 claims remain in progress. Of these, 8,213 have not been heard: 1,058 are awaiting admission, 5,663 are admitted but no hearing is scheduled, and 1,492 are scheduled for later dates.

Shelley Trevethan described how the Accelerated Hearing Process is being used to try to move claims to hearing even where mandatory documents are incomplete. Close to 100 claimants over age 80 are being scheduled for hearings in this way.

Dan Shapiro described the work to deal with law firms with insufficient capacity to attend hearings, particularly two firms in Saskatchewan that hold about 2,000 claims. Deputy Chief Adjudicator Rodger Linka is meeting with two large firms in Saskatchewan to suggest solutions, in order to avoid the need for court intervention, including the possibility of bringing on additional legal counsel. Shelley Trevethan described the approach for contacting law firms.

Mitch Holash asked if there was a principled way to advise the clients that their claims are not moving forward because of their lawyer's capacity issues. Dan Shapiro replied that it may be possible to place a notice on the Secretariat's web site, suggesting that claimants talk to their lawyer, ask when their hearing will be, and if their lawyer will be able to complete the case in time.

Line Paré pointed out that capacity issues may not just affect hearings, but also the resolution of claims. It is important that claimant counsel have the capacity to review the decision and do the settlement process.

4. Executive Director's report

Shelley Trevethan reported on work conducted by the Adjudication Secretariat to update its "risk profiles." Major issues identified include human resources capacity, procurement, information management, and legal risk.

Mayo Moran asked if the Adjudication Secretariat's upcoming budget submission could articulate that if these issues are not resolved, the impact is that it will take longer to complete the IAP. Shelley Trevethan said that if the 4,500 hearing target is not met in 2014-15, unspent money could be moved to 2015-16. However, retaining staff will become progressively more difficult. The Adjudication Secretariat is fortunate to have staff who are incredibly devoted to the residential school settlement, but even very committed staff will need to consider their future. The Secretariat is pursuing options, such as greater investment in training, to provide some incentive for staff to stay.

5. Chief Adjudicator's report

Dan Shapiro reported that at Canada's insistence, the consent orders to implement the Incomplete File Resolution procedure and the Lost Claimant protocol are being signed by each member of the National Administration Committee. So far, four of the seven members have signed.

The National Administration Committee has vacillated on whether it will update the list of claimants' counsel that appears on the official court web site for the Settlement Agreement. Dan Shapiro said that he is trying to get through to the chair of the NAC, but if the committee will not occupy the field, the Chief Adjudicator will work to build a list of lawyers to recommend to self-represented claimants.

The Chief Adjudicator is finalizing the report from the Aboriginal adjudicator focus groups held in April 2014 and will provide it to the Oversight Committee once completed. Some of the recommendations include a network for discussion and support among Aboriginal adjudicators, a separate meeting of Aboriginal adjudicators to coincide with the next national meeting of adjudicators, and a desire to assist in developing cultural awareness training and supporting non-Aboriginal adjudicators.

The Manitoba Court of Queen's Bench released its decision in the Manitoba Form Fillers case on June 5. The Court ruled that any service contracts requiring claimants to pay contingency fees to form fillers are null and void, as are contracts requiring claimants to pay non-lawyers for legal services. This leaves open the issue of a remedy for people who have already paid fees. The court has ordered a process with fixed timelines: lawyers must provide statutory declarations to the Monitor within 60 days, and within four months the Monitor will report back to the court on how to provide redress to claimants. In total, there are seven law firms affected with roughly 2,250 cases.

Michael Mooney said that the Monitor has established an email box for declarations, will create a database, track phone calls, and put a team together. He said that Dan Shapiro, Shelley Trevethan, and himself have committed to

work closely together to gather information. He said that the strategy to deal with the decision is tight and organized and will incorporate the assistance and guidance of an Independent Special Advisor once appointed.

Dan Shapiro reported that the RFD on Doug Keshen was filed with the Court last week by the Monitor, with affidavit material from Deputy Chief Adjudicator Catherine Knox.

6. Chief Adjudicator's Annual Report to the Oversight Committee

Dan Shapiro presented his Annual Report. In addition to highlighting the achievements of the IAP in 2013, it pays tribute to Dan Ish and Chief Justice Winkler, both of whom retired during the year, as well as to those who passed away during the year: Court Counsel Randy Bennett, and adjudicators Firoz Dossa and Bob Pelton.

Line Paré said that Canada had reviewed the report and wished to suggest a number of changes:

- On page 5, the Chief Adjudicator's message said that in 2013 the focus was on beginning the process of winding down, but there was also important work to ensure the continuation of full capacity before the wind-down.
- On page 16, she suggested that mandatory document collection be described as a "challenge" rather than a "blockage."
- On page 21, where the master list of student-on-student admissions is referred to, she suggested that the report say the master list is redacted to ensure privacy and confidentiality.
- On page 12, second paragraph, there is a reference to the availability of claimant counsel and Canada's representatives to attend hearings. She asked the Chief Adjudicator to delete the reference to Canada's representatives because, according to her, it has never been an issue.

Mayo Moran pointed out that the report is the Chief Adjudicator's report, not a report of the Oversight Committee.

Dan Shapiro said that he would consider the comments and determine whether any revisions might be appropriate.

7. St. Anne's IRS

Dan Shapiro reported to the Committee on a second Request for Directions filed by Claimant Counsel, to be heard by Justice Perell in Toronto today.

Mayo Moran referred to correspondence from Fay Brunning and Edmund Wetatawabin, and a memorandum from Diane Soroka.

- Decision: The Oversight Committee approved the proposed response to Edmund Wetatawabin with minor changes.

8. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, September 9, 2014, in Toronto.